

In re) Fair Hearing No. 8761
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Appeal of)

The petitioner appeals the decision by the Department of Social Welfare denying his application for Medicaid. The issue is whether the petitioner is disabled within the meaning of the pertinent regulations.

1. The petitioner is a 33 year old man with a college degree in civil engineering who worked in his field as an engineering assistant for a little over 2 years in 1979 to 1981. Thereafter, he worked as an elementary and high school tutor and surveyor's assistant for several years. Most of his jobs did not last long or were very part time. The petitioner last worked in August of 1987. Social reports filled out by the petitioner indicate that he left his jobs because of panic, discomfort and a growing feeling that he could not meet job demands and to find more flexible part-time jobs.

2. In late 1987, the petitioner began to be seen by a Vocational Rehabilitation Counselor. In May of 1988 his mental status was evaluated for purposes of the Vocational Rehabilitation program. That report noted that the petitioner exhibited no major psychiatric disorder but was quite tearful

and appeared fatigued and anxious with low self-esteem and low self-confidence. His anxiety led to somatic complaints and sleep disturbance. It was recommended that he undergo a full psychological exam and counseling.

3. The petitioner's physician reported in May of 1988 that the petitioner had suffered intestinal pain for over a decade but that GI tests 7 or 8 years previously had revealed no problem. He noted that the petitioner appeared to have an eating disorder and that large crowds and cluttered atmospheres seemed to be a problem for him, especially in his past job situations. He was diagnosed as having irritable bowel syndrome, anxiety, depression and perhaps agoraphobia.

4. In June of 1988, the petitioner's V.R. counselor urged him to apply for Medicaid and wrote a letter in support of his application which stated that the petitioner was an extremely fragile and anxious person. He was afraid to go to the welfare office alone to apply and his counselor had to accompany him. He noted that he appeared depressed and tearful but was motivated to improve his situation (he did some volunteer work in the community) which had recently worsened due to the suicide of the petitioner's brother. He stated "I think it (success) will be difficult however and do not anticipate him making progress towards full-time competitive employment very rapidly."

5. The petitioner's social report filed with his

application indicated that in June of 1988, he worked one afternoon per week in a town library to try to keep up his associations. His other activities involved classes out in the community 3 nights per week. The rest of his activities took place at home (cooking, cleaning, playing piano).

6. The petitioner's Medicaid application was eventually denied and he appealed. He advised the Board by letter that he was not able to attend a hearing without getting sick and that he could not get a legal aid lawyer due to a case overload. The hearing officer advised the petitioner that the file needed more evidence, especially a complete psychiatric or psychological evaluation but the petitioner did not respond to that advice. Concerned that she had no response to her letters to the petitioner and could not otherwise contact him, the hearing officer contacted his Vocational Rehabilitation counselor who advised her that the petitioner's agoraphobia and anxiety prevented him from seeing a psychiatrist or developing the record in any way at that time. The counselor said he would work with the petitioner to try to achieve that result if the matter could be deferred. The hearing officer and department agreed to that course of action in May of 1989.

7. In November of 1989, the hearing officer inquired as to the status of the case and was informed by the petitioner that he had recently seen a psychiatrist and was willing to release his opinion to the board.

8. The psychiatrist who has been treating the

petitioner since November of 1989, diagnosed him as suffering from depression, anxiety, a panic disorder and obsessiveness. It was his opinion that these disorders significantly impaired his ability to understand, remember, sustain concentration and persistence, socially interact and adapt. Specifically he found the petitioner "markedly" (the most severe category) limited in his ability to: understand and remember detailed instructions; carry out detailed instructions; maintain attention and concentration for extended periods; perform activities within a schedule; maintain regular attendance; be punctual within customary tolerances; sustain an ordinary routine without special supervision; to work in coordination with or proximity to others without being distracted by them; to complete a normal workday and workweek without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods; to interact appropriately with the general public; to respond appropriately to changes in the work setting; to travel in unfamiliar places or use public transportation; and to set realistic goals or make plans independently of others. It was also his opinion that his condition "moderately limited" the petitioner's ability to: remember locations and work-like procedures; to understand and remember very short and simple instructions; to carry out very short and simple instructions; to make simple work-related decisions; to ask simple questions or request

assistance; to accept instructions and respond appropriately to criticism from supervisors; to get along with co-workers or peers without distracting them or exhibiting behavioral extremes; to maintain socially appropriate behavior and to adhere to basic standards of neatness and cleanliness; and to be aware of normal hazards and take appropriate precautions.

9. The psychiatrist attempted to treat the petitioner with a medication called "Doxepin", but due to excessive side effects he changed to "Prozac" with which he's "seen a significant and sustained improvement". It was the psychiatrist's opinion that the petitioner "remains, however, significantly constricted and handicapped by symptoms of anxiety, panic episodes and depression, and tends to become quite obsessive in worrying about details. He is so worried about finances that he is unwilling to come for further treatment at this time, even though he realizes that medications have made a major difference for him. With his history and response to a brief period of medication, it is my opinion that he could return to useful functioning with sufficient support."

10. It was also the psychiatrist's "clinical impression that the petitioner's symptoms have been ongoing for a number of years but clearly were significantly worsened by his brother's suicide in June of 1988. My impression is his impairment has been severe and unrelenting since that time. You could probably make a case if they go

back even further but clearly they have been severe since then."

FINDINGS OF FACT

1. The evidence regarding the petitioner's age, education and vocational background set out in paragraph 1 of the summary are adopted as findings.

2. The medical diagnosis, functional limitations and prognosis set out by his psychiatrist in paragraphs 8 and 9 of the summary are adopted as findings.

3. The petitioner's impairment is found to have reached its current level of severity beginning in June of 1988 based on the evidence in paragraphs 3, 4, 5, 6 and 10 containing the contemporaneous reports of the petitioner himself, a physician, mental health worker and vocational rehabilitation specialist, and the opinion of his current treating psychiatrist.

4. The petitioner's impairment is found to have been unrelenting in severity since its onset in June of 1988, based on the vocational counselor's statements in paragraph 6 and the psychiatrist's opinion in paragraph 10.

5. The petitioner is found, based on the above evidence to have been unable to go out and seek psychiatric help until November 1989 or to attend his hearing due to his mental impairments. He is also found to have been unable to perform his former employment due to his anxiety and to have severely restricted his usual activities and social contacts due to his impairment.

ORDER

The department's decision is reversed.

REASONS

Medicaid Manual Section M211.2 defines disability as follows:

Disability is the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment, or combination of impairments, which can be expected to result in death or has lasted or can be expected to last for a continuous period of not fewer than twelve (12) months. To meet this definition, the applicant must have a severe impairment, which makes him/her unable to do his/her previous work or any other substantial gainful activity which exists in the national economy. To determine whether the client is able to do any other work, the client's residual functional capacity, age, education, and work experience is considered.

The petitioner has presented evidence that demonstrates he has had a severe and unrelenting mental impairment since his application for Medicaid in June of 1988 which meets or equals the listings of impairment for "Anxiety Related Disorders":

In these disorders anxiety is either the predominant disturbance or it is experienced if the individual attempts to master symptoms; for example, confronting the dreaded object or situation in a phobic disorder or resisting the obsessions or compulsions in obsessive compulsive disorders.

The required level of severity for these disorders is met when the requirements in both A and B are satisfied, or when the requirements in both A and C are satisfied.

A. Medically documented findings of at least one of the following:

1. Generalized persistent anxiety accompanied by three out of four of the following signs or symptoms:

- a. Motor tension; or
- b. Automatic Hyperactivity; or
- c. Apprehensive expectation; or
- d. Vigilance and scanning;

or

2. A persistent irrational fear of a specific object, activity, or situation which result in a compelling desire to avoid the dreaded object, activity, or situation; or

3. Recurrent severe panic attacks manifested by a sudden unpredictable onset of intense apprehension, fear, terror and sense of impending doom occurring on the average of at least once a week; or

4. Recurrent obsessions or compulsions which are a source of marked distress; or

5. Recurrent and intrusive recollections of a traumatic experience, which are a source of marked distress;

AND

B. Resulting in at least two of the following:

1. Marked restriction of activities of daily living; or

2. Marked difficulties in maintaining social functioning; or

3. Deficiencies of concentration, persistence or pace resulting in frequent failure to complete tasks in a timely manner (in work settings or elsewhere); or

4. Repeated episodes of deterioration or decompensation in work or work-like settings which cause the individual to withdraw from the situation or to experience exacerbation of signs and symptoms (which may include deterioration of adaptive behaviors);

C. Resulting in complete inability to function independently outside the area of one's home.

Specifically the medical evidence meets or exceeds the requirements of A. 2, 3 and 4, and B. 1, 2, 3 and 4. Thus the petitioner is disabled within the regulations. 20

C.F.R. § 416.920(d).

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